

Local Rule of Bankruptcy Procedure 4001. RELIEF FROM AUTOMATIC STAY; PROHIBITING OR CONDITIONING THE USE, SALE, OR LEASE OF PROPERTY; USE OF CASH COLLATERAL; OBTAINING CREDIT; AGREEMENTS.

(a) Use of 14-Day Negative Notice Language

The following motions:

1. Motion to provide adequate protection;
2. Motion to prohibit or condition the use, sale, or lease of property pursuant to §363(e) of the Code;
3. Motion for relief from automatic or co-debtor stay;
4. Motion for authority to use or to prohibit use of cash collateral;
5. Motion to obtain credit pursuant to §364 of the Code; and
6. Motion to approve a stipulation regarding any of the above

must contain the following 14-day negative notice language, which must be in boldface, large font and located in the text of the motion -- preferably in the first paragraph:

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

The use of 14-day negative notice language does **not** apply to a motion for authority (or a notice of intention) to use, sell or lease property of the estate pursuant to §363(b) of the Code or a motion to sell property of the estate free and clear of liens or other interests pursuant to §363(f) of the Code. Such motions must contain **21-day** negative notice language described in LBR 9007(a), and contain a certificate of service reflecting service on the master mailing list (matrix) as constituted by the Court on the date of

service. See LBR 6004.

(b) Content: Motion for Relief From Automatic Stay

A motion for relief from the automatic stay must:

- (1) contain a title which:
 - (A) reflects that relief from the stay is sought against property, and
 - (B) waives the 30-day automatic stay hearing requirement, if desired. If a waiver is not filed, the Court will convene a hearing within the required 30 days in the division most convenient to the Court;

Title Example: Motion for Relief from Automatic Stay Against 2002 Ford Taurus, Waiver of 30-Day Hearing Requirement, and Request for Hearing in Beaumont, Texas.

- (2) contain the 14-day negative notice language described in LBR 4001(a);
- (3) contain a certificate of service reflecting service of the motion in accordance with LBR 9013(f) and in a manner consistent with Fed. R. Bankr. P. 7004(b);
- (4) be accompanied by an affidavit which details the date and amount of each post-petition payment which:
 - (i) has become due since the filing of the petition; and
 - (ii) has been received by the Movant since the filing of the petition,if relief from the stay is sought “for cause” in a case under Chapter 11, 12, or 13 based upon an alleged failure of the debtor to tender a required post-petition payment; and
- (5) be accompanied by a proposed order substantially complying with *TXEB Local Form 4001*.

(c) Motion to Use Cash Collateral

1. General Requirements

A motion to use cash collateral must include:

- (A) the amount of cash collateral sought to be used;

- (B) name and address of each entity having an interest in the cash collateral;
- (C) name and address of any entity in control or having possession of the cash collateral;
- (D) facts demonstrating the need to use cash collateral;
- (E) nature of the protection to be provided to those parties having an interest in the cash collateral; and
- (F) a proposed budget exhibit which itemizes the proposed use of the cash collateral; accompanied by
- (G) a proposed order.

2. **Emergency Affidavit Requirements**

A request for an emergency hearing regarding a motion for use of cash collateral must comply with the standards in LBR 9007(b) and, in compliance with such standards, the affidavit or unsworn declaration under penalty of perjury attesting to the emergency facts in a cash collateral context must reflect the following:

- (A) names and addresses of all creditors holding or asserting an interest in the collateral and their attorneys, if known;
- (B) efforts made to contact the affected creditor(s) or its/their attorneys with regard to the motion;
- (C) the nature of the immediate and irreparable injury, loss, or damage;
- (D) verification of a 30-day budget of emergency items; and
- (E) the adequate protection to be provided to the affected creditors.

(d) **Agreements**

1. If a stipulation involves relief beyond the scope of that requested in any motion governed by this rule, a motion to approve the stipulation must be filed. The motion must contain 14-day negative notice language, a certificate of service which evidences service upon the master mailing list (matrix) as constituted by the Court on the date of service, and attach the stipulation and a proposed order which grants the motion for approval.

2. In a Chapter 13 case, a declaration under penalty of perjury by the debtor(s) substantially conforming to *TXEB Local Form 4001-b* must be attached to any proposed agreed order modifying the automatic stay that seeks to address unpaid post-petition mortgage obligations through a modification of a confirmed Chapter 13 plan.

(e) **Lengthy Agreed Cash Collateral or Financing Orders**

Agreed orders regarding a motion for authority to use cash collateral or to obtain credit pursuant to §364 of the Code which are in excess of ten (10) pages in length must be accompanied by an executed attorney checklist of provisions in substantial conformity with Exhibit J of *TXEB Appendix 9007*, regardless of whether the underlying case has been designated as a complex Chapter 11 case by the Court.